

June 6, 2011

VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: ***In re Applications of AT&T Inc. & Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses & Authorizations, WT Dkt No. 11-65 – Objection to Disclosure of Confidential and Highly Confidential Information to James S. Blaszak, Andrew M. Brown and Susan M. Gately***

Dear Ms. Dortch:

Pursuant to the Protective Orders for the AT&T/T-Mobile USA proceeding,¹ AT&T Inc. (“AT&T”), Deutsche Telekom AG (“Deutsche Telekom”), and T-Mobile USA, Inc. (“T-Mobile”; collectively with AT&T and Deutsche Telekom, “Applicants”) object to the Acknowledgments of Confidentiality (“Acknowledgments”) filed in the above-referenced docket by Ad Hoc Communications Users Committee Outside Counsel James S. Blaszak and Andrew M. Brown of Levine, Blaszak, Block & Boothby LLP (collectively, “Levine Firm”) and Outside Consultant Susan M. Gately.² Applicants object to the Levine Firm and Ms. Gately because they appear to be engaged in Competitive Decision-Making³ and, thus, are ineligible to access Confidential and Highly Confidential Information (including NRUF/LNP Confidential Information) under the Protective Orders.

¹ *In re Applications of AT&T Inc. & Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses & Authorizations*, WT Dkt No. 11-65, Second Protective Order, DA 11-753 (WTB rel. Apr. 27, 2011); *In re Applications of AT&T Inc. & Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses & Authorizations*, WT Dkt No. 11-65, NRUF/LNP Protective Order, DA 11-711 (WTB rel. Apr. 18, 2011); *In re Applications of AT&T Inc. & Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses & Authorizations*, WT Dkt No. 11-65, Protective Order, DA 11-674 (WTB rel. Apr. 14, 2011) (collectively, “Protective Orders”).

² See Letter from Amanda J. Delgado, Levin, Blaszak, Block & Boothby LLP to Marlene H. Dortch, Secretary, FCC (June 1, 2011).

³ Undefined capitalized terms have the meanings supplied in the Protective Orders.

For example, Mr. Brown's Professional Profile on the LB3 website seems to establish that Mr. Brown is "involved in Competitive Decision-Making,"⁴ which includes advice about the analysis underlying the relevant business decisions of a client in a business relationship with a submitting party.⁴ The website states that "[h]is practice focuses on the representation of medium and large companies in both *their strategic planning* and contract negotiations for telecommunications products and services and related technologies."⁵ The description of Mr. Blaszak's practice on the law firm's website is similar. Ms. Gately's public LinkedIn Profile states that she is the "[p]rimary contact point and coordinator for ETI's major corporate user clients, *providing advice in the areas of strategic planning, service procurement negotiation, and pricing policy trends.*"⁶ It also states that she provides "strategic advising."⁷

These excerpts strongly suggest that Messers. Brown and Blaszak and Ms. Gately are engaged in Competitive Decision-Making in that their activities involve advice about or participation in the relevant business decisions of a client in a business relationship with a Submitting Party. In particular, Applicants sought an explanation of these excerpts from Ms. Boothby on Monday, June 6. Based upon this discussion, we believe that the Levine Firm is engaged in Competitive-Decision-Making. Thus, granting the Levine Firm and Ms. Gately access to this transaction's Confidential and Highly Confidential Information would allow them the ability to use this competitively sensitive information when advising or otherwise participating in the business decisions of current or future clients. It is unreasonable to expect the Levine Firm and Ms. Gately to forget what they learn or to "split their brains in two" in order to keep the Confidential and Highly Confidential Information from being used unfairly to the detriment of Applicants.

⁴ Second Protective Order ¶ 2; NRUF/LNP Protective Order ¶ 4; Protective Order ¶ 2. ("Competitive Decision-Making' means that a person's activities, association, or relationship with *any of its clients* involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or a business relationship with the Submitting Party.") (emphasis added).

⁴ Second Protective Order ¶ 2; NRUF/LNP Protective Order ¶ 4; Protective Order ¶ 2. ("Competitive Decision-Making' means that a person's activities, association, or relationship with *any of its clients* involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or a business relationship with the Submitting Party.") (emphasis added).

⁵ See Professional Profile of Andrew M. Brown, at 1, <http://www.lb3law.com/attorneys.php?PeopleID=1> (emphasis added) (last visited June 4, 2011) (hereinafter "Professional Profile") (Appendix A).

⁶ See Susan Gately's Experience, <http://www.linkedin.com/pub/susan-gately/25/943/673> (emphasis added) (last visited June 4, 2011) (Appendix B).

⁷ *Id.*

As Applicants have stated before, they welcome meaningful public participation in this proceeding and do not submit objections lightly. To date, overall, Applicants have cleared for access to Confidential or Highly Confidential Information 97 Outside Counsel (including non-attorney staff) and 33 Outside Consultants, collectively representing 31 parties. Applicants have filed objections in only six other cases where they clearly have been warranted: Bursor & Fisher, P.A.,⁸ Economics and Technology, Inc.,⁹ and Faruqi & Faruqi, LLP,¹⁰ all three of which were interrelated, as well as three management consultants from PRTM Management Consultants,¹¹ Mr. Leo A. Wrobel of TelLAWCom Labs Inc,¹² and the Spectrum Management Consultants.¹³ Indeed, Applicants have withdrawn their objections to the Spectrum Management Consultants¹⁴ and to Economic and Technology, Inc.¹⁵ after their concerns that the consultants were involved in Competitive Decision-Making were alleviated.

⁸ See Letter from Peter J. Schildkraut, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (May 12, 2011) (objecting to attorneys from Bursor & Fisher, P.A.).

⁹ See Letter from Peter J. Schildkraut, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (May 16, 2011) (objecting to ETI).

¹⁰ See Letter from Peter J. Schildkraut, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (May 20, 2011) (objecting to lawyers from Faruqi & Faruqi, LLP).

¹¹ See Letter from Peter J. Schildkraut, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (May 11, 2011) (objecting to the PRTM management consultants). So far as Applicants are aware, Sprint did not file a reply to the objection by the May 18, 2011 deadline for doing so. See 47 C.F.R. §§ 1.4(e)(1), (g), 1.45(c).

¹² See Letter from Peter J. Schildkraut, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (May 18, 2011) (objecting to Mr. Leo A. Wrobel).

¹³ See Letter from Peter J. Schildkraut, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (May 23, 2011) (objecting to Mr. Steven Stravitz and Mr. Kurt Schaubach).

¹⁴ See Letter from Peter J. Schildkraut, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (May 25, 2011) (withdrawing objection to Mr. Steven Stravitz and Mr. Kurt Schaubach).

¹⁵ See Letter from Peter J. Schildkraut, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (June 6, 2011) (withdrawing objection to ETI).

Marlene H. Dortch, Esq.

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For these reasons, the Commission should dismiss or deny the Acknowledgments of Confidentiality submitted on behalf of the Levine Firm and Ms. Gately.

Respectfully submitted,

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Attachments

cc: Attached Service List

CERTIFICATE OF SERVICE

I hereby certify that on this sixth day of June, 2011, I caused true and correct copies of the foregoing to be served by electronic mail upon:

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